

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

<b>HENNESSY INDUSTRIES, INC.,</b>	)	
	)	
<b>Plaintiff,</b>	)	<b>Case No. 3:15-cv-01092</b>
	)	
<b>v.</b>	)	<b>Judge William J. Haynes, Jr.</b>
	)	
<b>PLOMBCO, INC.,</b>	)	<b>JURY TRIAL DEMANDED</b>
	)	
<b>Defendant.</b>	)	

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**DEFENDANT PLOMBCO, INC.'S MOTION FOR SUMMARY JUDGMENT**

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COMES NOW Defendant Plombco, Inc. ("Plombco"), and, pursuant to Rule 56 of the Federal Rules of Civil Procedure, respectfully moves the Court to enter a summary judgment in favor of Plombco and against Plaintiff Hennessy Industries, Inc. ("Hennessy") on (1) Hennessy's claim for infringement of U.S. Patent No. 9,157,501 (the "'501 Patent") and (2) Plombco's counter-claim for a declaratory judgment of invalidity of the '501 Patent.

There is no genuine dispute as to any material fact. In the application that resulted in the issuance of the '501 Patent, Hennessy attempted to characterize the '501 Patent as a continuation application claiming priority at least to U.S. Application No. 10/724,000 (filed November 26, 2003; abandoned December 17, 2005) (the "'000 Application") in an attempt to predate Plombco's Plasteel products. However, there are two intervening patents within the '501 Patent's priority claim that break its chain of priority and preclude the '501 Patent from availing itself to the '000 Application's filing date. As a result, Plombco is entitled a judgment as a matter of law. The applications filed in the same patent family preceding the break in priority constitute invalidating prior art because those applications were published more than one year

prior to the earliest effect filing date of the '501 Patent and provide substantially the same disclosure as the '501 Patent.

In support of this Motion, Plombco files contemporaneously herewith a supporting Memorandum of Law, Statement of Material Facts, and the Declaration of David F. Sawrie. Should it prevail in this Motion, Plombco reserves the right to file a separate motion requesting prevailing party attorney fees and expenses under 35 U.S.C. § 285 because it believes that this is an exceptional case.

WHEREFORE, Plombco respectfully requests the Court to enter summary judgment in favor of Plombco and against Hennessy on (1) Hennessy's claim for infringement of the '501 Patent (Count I of the First Amended Complaint [Doc. 11]) and (2) Plombco's counterclaim for a declaratory judgment of invalidity of the '501 Patent (First Counterclaim in Plombco's Answer to First Amended Complaint and Counterclaims [Doc. 22]).

### **ORAL ARGUMENT REQUESTED**

Plombco respectfully requests oral argument on this Motion. The issues set forth in the Motion and supporting memorandum involve complex nuances of the Patent Act and related case law and, therefore, argument may aid the Court in the efficient determination of this Motion.

Respectfully submitted,

BAKER, DONELSON, BEARMAN,  
CALDWELL & BERKOWITZ, P.C.

s/ Samuel F. Miller

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**CERTIFICATE OF SERVICE**

On February 18, 2016, the foregoing document was electronically filed. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. mail, postage prepaid. Parties may access this filing through the Court's electronic filing system.

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s/ Samuel F. Miller

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